

2000

State of Utah v. Patricia Ann Snyder : Brief of Appellant

Utah Court of Appeals

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Paul A. Bittmenn; Attorney for Appellee.

Patricia Ann Snyder; Pro Se.

Recommended Citation

Brief of Appellant, *Utah v. Snyder*, No. 20000822 (Utah Court of Appeals, 2000).

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
)	
Plaintiff/Respondent,)	
)	Case No. 20000822-CA
vs.)	
)	
PATRICIA ANN SNYDER,)	
)	
Defendant/Appellant.	)	Priority No. 0 2

BRIEF OF APPELLANT

Appeal from the Judgment, Sentence and Commitment of the Fifth Judicial District Court
in and for Iron County, State of Utah, with the Honorable J. Philip Eves, District Judge, presiding.

PATRICIA ANN SNYDER
Defendant Appellant
955 West 400 North
Cedar City, Utah 84720
Telephone: (435) 867-8728

PAUL A. BITTMENN
Deputy Iron County Attorney
Attorney for Plaintiff/Respondent
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FILED
Utah Court of Appeals
JAN 13 2001
Paulette Stagg
Clerk of the Court

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
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955 West 400 North
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RULES

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
)	
Plaintiff/Respondent,)	
)	
vs.	)	Case No. 20000822-CA
)	
PATRICIA ANN SNYDER,)	
)	
Defendant/Appellant.)	

JURISDICTION OF THE COURT OF APPEALS

The above-entitled court has jurisdiction in this matter in that it is a criminal matter not involving the conviction of a first degree felony. Utah Code Ann. § 78-2a-3(2)(e)(1996).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Was the Defendant denied Due Process with regard to the void for vagueness doctrine?

The court made a conclusion of law that is clearly erroneous because the conclusions were based on instructions that were vague and standardless as they were applied to this case. For "[although [the ordinance] may be neither vague, overbroad, nor otherwise invalid as applied to the conduct charged against a particular defendant, he is permitted to raise its vagueness or unconstitutional overbreadth as applied to others. And if the law is found deficient in one of these respects, it may not be applied to him either, until and unless a satisfactory limiting construction is placed on the [ordinance]. The [ordinance], in effect, is stricken down on its face. . . ." Id., at 521.

Plummer v. City of Columbus, 414 U.S. 2 (1973)

TEXT OF AUTHORITIES

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall State deprive any person of life, liberty, or property, without due process of law; nor deny it to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

2. No person shall be deprived of life, liberty or property without due process of law.

Utah Const. Art. I, § 7.

STATEMENT OF THE CASE

A. Nature of the Case

This is a criminal case in which Defendant was charged, by information, with theft by deception, a second degree felony.

B. Course of the Proceedings

At a preliminary examination, Defendant was bound over based on sworn affidavits in place of victims testimony on the aforesaid charge in district court. Defendant pled “not guilty”

and the matter was set for trial. Prior to the trial date the charge was amended by the prosecution. The charge was amended to theft, a third degree felony or in the alternate wrongful appropriation, a class A misdemeanor. At the conclusion of the evidence, the jury entered a verdict of "guilty" to wrongful appropriation.

C. Disposition at Trial Court

Based upon the verdict of guilty, the court entered a Judgment, Sentence and Commitment sentencing Defendant to serve a period of not more than one year in the Iron County jail and to pay a fine of \$2,500 plus an 85% surcharge. The court stayed the execution of sentence and ordered the Defendant to serve ten days in the Iron County jail followed by 36 months of probation and a \$750 fine.

D. Statement of Facts

On June 9th, 1999, law enforcement officers entered the Defendants home without an arrest or search warrant and made inquiries regarding the Defendants knowledge concerning certain eBay auctions. During the course of the inquiry the Defendant offered to show the officers her records regarding the eBay auctions. Subsequently, the officers placed the Defendant in custody with handcuffs and transported her to the Cedar City Police Station. The Defendant was interviewed and several hours later a charge was determined then she was brought to the Iron County jail. While the Defendant and her roommate were at the Cedar City Police Station an officer was in the home seizing property (entire computer system and records) as well as taking photographs. (Transcript of Trial, dated May 25, 2000 [hereinafter Tr.] 185-188) The following

day the Defendant attempted to make contact with individuals involved in the aforementioned auctions. The contacts were successful and a timely refund of monies was agreed upon and honored by both parties.

SUMMARY OF ARGUMENT

The Defendant has a Constitutional right to due process of law. The due process clauses of the fifth and fourteenth amendments to the United States Constitution are the foundation of the void for vagueness doctrine. A statute is void for vagueness whenever “men of common intelligence must necessarily guess at its meaning and differ as to its applications”. It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. This case is void for vagueness because the jury had to arrive at their own interpretation of when, according to the elements of the statutes, consent had to have ended and unauthorized control began.

ARGUMENT

POINT I

THE JURY HAD TO GUESS AT THE MEANING OF THE STATUTE WITHOUT CLEAR INSTRUCTION FROM THE COURT

In this case the terms “without consent” and “unauthorized control” are void for vagueness. There was no definition or clear instructions in the jury instructions regarding a time frame when consent had to have ended and unauthorized control began. It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without

any legally fixed standards, what is prohibited and what is not in each particular case. Giaccio v. Pennsylvania, 382 U.S. 399 (1966). This code is void for vagueness, both in the sense that it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," United States v. Harriss, 347 U.S. 612, 617 (1954), and because it encourages arbitrary and erratic arrests and convictions. Thornhill v. Alabama, 310 U.S. 88 (1940) ; Herndon v. Lowry, 301 U.S. 242 (1937). During the course of the trial the State's witnesses showed that they did give consent for the Defendant to possess the money by participating in the auctions and agreeing to the terms set up by the Defendant. Plummer v. City of Columbus, 414 U.S. 2 (1973). The State did not prove that the Defendant was not given permission to take or use the property. The law does not require people disclose all relevant information during a business transaction - caveat emptor still exists in that regard. So, if a buyer fails to ask a question, there is no false pretense if the seller does not inform them of something. Statements of expected facts, promises, predictions, and expectations cannot be the basis for false pretenses. The State tried to prove that there was unauthorized control by questioning Jackie Parrish, who claimed by testimony in court as well as sworn affidavit, that she was not aware of the items being at real beans. This was later proven to be false by the Defense and also showed that she had continued to bid on the items after receiving that knowledge. (Tr. 48) The State also questioned Renee Fallaha regarding her transaction and by her testimony in court as well as her sworn affidavit she stated that escrow was not used even though she inquired with the Defendant about it but continued to bid.(Tr. 79-83) It was shown by the Defense that the only contact Ms. Fallaha had attempted to make was an

e-mail on June 8, 1999 which stated that she was still excited about getting the card (contained in witnesses sworn affidavit exhibit #9), there was no concern shown but she called the Cedar City Police Department the same day and complained.(Tr. 13,87,89) Where in this e-mail is there any indication of giving up consent or claiming of unauthorized control even if the Defendant had been able to retrieve it at that time? The first contact about anyone having problems was made by the Cedar City Police Department on June 9, 1999 which resulted in the arrest. Both of the State's witnesses claim that they tried to call several times but could not get through or the phone would just ring, but failed to produce any phone records which would have shown the long distance charges incurred as both were from out of state. A representative from the phone company was also one of the States witnesses and stated that there was never any interrupted service and the phone number had not changed, yet Ms. Fallaha contends in her affidavit that directory service gave her a number that was disconnected.(Tr. 130-131, sworn affidavit) It is clearly obvious, upon reviewing the court transcripts, that the State was willing to take its witnesses on circumstantial evidence alone with no physical evidence and hoped that the jury would do the same, which they did, with vague instruction from the court in regards to the issues of consent and unauthorized control. The Defendant was not afforded the same luxury and was basically on the stand to prove her innocence. The State even goes so far as to state in its closing arguments that intent was proven because the Defendant refunded the money after being arrested.(Tr. 254) Intent must exist at the time of taking in order for a crime to have taken place and it must be proven beyond a reasonable doubt which it was not. In the case of People v. JASO (Court of Appeals of

California (1970) 4 Cal.App.3d 767, 84 Cal.Rptr. 567) The court held that the Defendant could not be found guilty of theft (count II) unless the proved circumstances are not only consistent with the hypothesis that he had the specific intent to “take the property of another” but are irreconcilable with any other rational conclusion. (CALJIC Instruction #27-A.) The California Court of Appeals reversed the ruling on this case because the court failed to properly instruct the jury. California has specific definitions regarding the elements of theft whereas Utah’s definitions are vague. In the instant case the State had no sufficient evidence that any crime had taken place, all they could do in their closing argument, which is supposed to be a summary of their evidence, was attack the Defendant with unfounded, defamatory, and unproven statements as well as evidence that was inadmissible by the court¹.(Tr. 248-255)

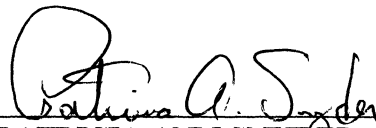
CONCLUSION

Based upon the above discussion, this court should reverse the decision of the lower court, because there are no time standards set and apparently a sellers rules don’t apply. This would allow for pressing charges at any time, even the day after the money is sent. It would also negate caveat emptor in any business transaction. It would allow people entered in contracts to go directly to the authorities without trying to make any contact to rectify the problem with the other person involved and would consequently, further clog the judicial system, due to the fact that agreements

¹ The Defendant is not appealing on Prosecutorial misconduct, which is clearly evident in the closing statements, rather the fact that no elements of the crime were proven beyond a reasonable doubt and the jury had to guess as to what happened at the trial and apply it to reach a verdict.

made between two parties makes only one of the parties responsible. .

RESPECTFULLY SUBMITTED this 19th day of January, 2001.


PATRICIA ANN SNYDER
Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2001, I caused to hand deliver two (2) copies of the foregoing BRIEF OF APPELLANT to the following:

Paul A. Bittmenn
Deputy Iron County Attorney
97 North Main, Suite #1
P.O. Box 428
Cedar City, Utah 84720


PATRICIA ANN SNYDER

ADDENDUM

PAUL A. BITTMENN - USB #8145
Deputy Iron County Attorney
97 North Main, Suite #1
P.O. Box 428
Cedar City, Utah 84720
Telephone: (801) 586-6694
Telecopier: (801) 586-2737

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,
STATE OF UTAH

STATE OF UTAH,	)	INFORMATION
Plaintiff,)	
vs.)	
PATRICIA ANN SNYDER	)	Criminal No.
d.o.b. 12/04/70	)	Judge Robert T. Braithwaite
Defendant.)	


The undersigned complainant, Paul A. Bittmenn, Deputy Iron County Attorney, states on information and belief that the Defendant, PATRICIA ANN SNYDER, committed the following crimes, to wit:

COUNT I: THEFT BY DECEPTION, a Second-Degree Felony, in violation of Title 76, Chapter 6, Section 405, Utah Code Annotated, 1953 as amended, in that the said Patricia Ann Snyder, on or about May, 1999, through June, 1999, in Iron County, State of Utah, did knowingly or intentionally obtain or exercise control over the property of others by deception and with a purpose to deprive them thereof, said property being cash exceeding \$5,000.00.

COPY

This Information is based on evidence provided by Sergeant Kelvin Orton and Officer Troy
Blanchard of the Cedar City Police Department.

DATED this 17th day of June, 1999.



PAUL A. BITTMENN
Deputy Iron County Attorney

PAUL A. BITTMENN - USB #8145
Deputy Iron County Attorney
97 North Main, Suite #1
P.O. Box 428
Cedar City, Utah 84720
Telephone: (801) 586-6694
Telecopier: (801) 586-2737

COPY

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,
STATE OF UTAH

STATE OF UTAH,	)	AMENDED INFORMATION
Plaintiff,)	
vs.)	
PATRICIA ANN SNYDER	)	Criminal No. 991500604
d.o.b. 12/04/70	)	Judge Robert T. Braithwaite
Defendant.)	

The undersigned complainant, Paul A. Bittmenn, Deputy Iron County Attorney, states on information and belief that the Defendant, PATRICIA ANN SNYDER, committed the following crimes, to wit:

COUNT I: THEFT, a Third-Degree Felony, in violation of Title 76, Chapter 6, Section 404, Utah Code Annotated, 1953 as amended, in that on or about May 1999 through June 1999, in Iron County, State of Utah, the said Patricia Ann Snyder did knowingly or intentionally obtain or exercise unauthorized control over the property of another with a purpose to deprive him thereof, said property having an approximate value of between \$1,000 and \$5,000.


OR IN THE ALTERNATIVE

COUNT I: WRONGFUL APPROPRIATION, a Class A Misdemeanor, in violation of Title 76, Chapter 6, Section 404.5, Utah Code Annotated, 1953 as amended, in that on or about May 1999

through June 1999, in Iron County, State of Utah, the said Patricia Ann Snyder, did obtain or exercise unauthorized control over the property of another, without the consent of the owner or legal custodian and with intent to temporarily appropriate, possess, or use the property or to temporarily deprive the owner or legal custodian of possession of the property.

This Information is based on evidence provided by Detective David Holm and Officer Troy Blanchard of the Cedar City Police Department.

DATED this 4th day of May, 2000.

A handwritten signature in cursive script, appearing to read "Paul A. Bittmenn", written over a horizontal line.

PAUL A. BITTMENN

Deputy Iron County Attorney

PAUL A. BITTMENN (# 8145)
Deputy Iron County Attorney
97 North Main, Suite #1
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Cedar City, Utah 84720
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**COPY
FILED**
AUG 24 2000
5th DISTRICT COURT
IRON COUNTY
Deputy Clerk

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,
STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

PATRICIA ANN SNYDER,

Defendant.

**JUDGMENT, SENTENCE, STAY OF
EXECUTION OF SENTENCE, ORDER
OF PROBATION, and COMMITMENT**

Criminal No. 991500604

Judge J Philip Eves

The Defendant, PATRICIA ANN SNYDER, having been found guilty by a jury of her peers of the offense of WRONGFUL APPROPRIATION, a Class A Misdemeanor on May 25, 2000, and the Court having accepted said jury verdict and thereafter having ordered the preparation of a presentence investigation report, and after said report was prepared and presented to the Court, the above-entitled matter having been called on for sentencing on August 14, 2000, in Parowan, Utah, and the above-named Defendant, PATRICIA ANN SNYDER, having appeared before the Court in person together with her attorney of record, Floyd W. Holm, and the State of Utah having appeared by and through Deputy Iron County Attorney Paul A. Bittmenn, and the Court having reviewed the presentence investigation report and having further reviewed the file in detail and thereafter having heard statements from the Defendant, her attorney, and the Deputy Iron County Attorney, and the

Court being fully advised in the premises now makes and enters the following Judgment, Sentence, Stay of Execution of Sentence, Order of Probation, and Commitment, to wit:

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, PATRICIA ANN SNYDER, has been convicted by a jury of her peers of the offense of WRONGFUL APPROPRIATION, a Class A Misdemeanor, and the Court having asked whether the Defendant had anything to say in regard to why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, it is adjudged that the Defendant is guilty as charged and convicted.

SENTENCE

IT IS HEREBY ORDERED that the Defendant, PATRICIA ANN SNYDER, pursuant to her conviction of WRONGFUL APPROPRIATION, a Class A Misdemeanor, is hereby sentenced to a term of incarceration in the Iron County Jail for a period not to exceed one (1) year, and the Defendant is hereby placed in the custody of the Utah State Department of Corrections.

IT IS FURTHER ORDERED that the Defendant, PATRICIA ANN SNYDER, pay a fine in the sum and amount of two thousand five hundred dollars (\$2,500), plus an eighty-five percent (85%) surcharge, for her conviction of the offense of WRONGFUL APPROPRIATION, a Class A Misdemeanor.

STAY OF EXECUTION OF SENTENCE

IT IS HEREBY ORDERED that the execution of the terms of incarceration imposed and the fines imposed in this case are hereby stayed, pending the Defendant's strict adherence to and compliance with the following terms and conditions of probation.

ORDER OF PROBATION

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, **PATRICIA ANN SNYDER** is hereby placed on court probation for a period of thirty-six (36) months under the supervision of the Utah Department of Adult Probation and Parole, to strictly comply with the following terms, provisions, and conditions:

1. The Defendant shall forthwith make and execute a formal agreement provided by the Utah Department of Adult Probation and Parole, and during the period of probation set forth herein, shall strictly conform with all the terms, provisions, and conditions, and the same are hereby made a part of this Order by means of incorporation.
2. That the Defendant shall report as ordered and required by the Court and the Department of Adult Probation and Parole during the period of this probation.
3. That the Defendant shall commit no law violations during the period of this probation.
4. That the Defendant shall serve a term of incarceration in the Iron County Jail for a period of ten (10) days. Said jail sentence shall be served on five (5) consecutive weekends with the Defendant reporting for the first forty-eight hour block on August 25, 2000, at or before 6 p.m., and reporting for consecutive weekends until the Defendant has served a total of ten (10) days in the Iron County Jail.
5. That the Defendant shall pay a fine and surcharge in the sum and amount of seven hundred and fifty dollars (\$750). Said fine shall be paid under the direction of the Utah Department of Adult Probation and Parole.

6. That the Defendant shall reimburse Iron County two hundred dollars (\$200) for costs associated with the Public Defender.

7. That the Defendant shall have no contact, directly or indirectly, or through any electronic medium (including e-mail or the internet), with any of the victims in this matter, Jackie Parrish, Renee Fallaha, Judy Michael, David Willis, Doug Ford, Chris Tsai, Geoff Carr, Donald Heller, Sue Anne Fowler, Ronald Zerby, Donita Schuman, Charlotte Cregger, Dan Fulop, Robert Wilson, Richard Gebbia, John Gill, Joyce Rhodehamel, Glen Yee, John Mack, Chris Hobrock, Aaron Manes, David Henise, Jason Matsui, Barbara Humble, Elizabeth Kagan, and Ann McBrayer.

8. That the Defendant shall not auction or sell any items or conduct any business or transactions through the internet in any form.

9. That the Defendant shall enroll in, complete and pay for the Life Skills Course offered by the Utah Department of Adult Probation and Parole. Upon successful completion and paying for said Life Skills Course, the Defendant shall receive a two hundred and fifty dollar (\$250) credit toward the seven hundred and fifty dollar (\$750) fine previously imposed

10. That the Defendant shall complete fifty (50) hours of community service. Said community service shall be done under the direction of the Utah Department of Adult Probation and Parole.

COMMITMENT

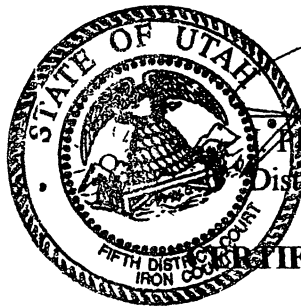
TO THE SHERIFF OF IRON COUNTY, STATE OF UTAH:

YOU ARE HEREBY COMMANDED to take the Defendant, PATRICIA ANN SNYDER, and deliver her to the Iron County/Utah State Correctional Facility in Cedar City, Utah, there to be

kept and confined in accordance with the above and foregoing Judgment, Sentence, Stay of Execution of Sentence, Order of Probation, and Commitment.

DATED this 24th day of August, 2000.

BY THE COURT:



Philip Eves
PHILIP EVES
District Court Judge

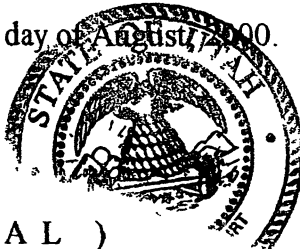
CERTIFICATE

STATE OF UTAH)
 ss.
COUNTY OF IRON)

I, CAROLYN BULLOCH, Clerk of the Fifth Judicial District Court in and for Iron County, State of Utah, hereby certify that the foregoing is a full, true and exact copy of the original Judgment, Sentence, Stay of Execution of Sentence, Order of Probation, and Commitment in the case entitled State of Utah vs. PATRICIA ANN SNYDER, Criminal No. 991500604, now on file and of record in my office.

WITNESS my hand and the seal of said office in Cedar City, County of Iron, State of Utah,

this 24 day of August, 2000.



(S E A L)

CAROLYN BULLOCH

CAROLYN BULLOCH
District Court Clerk

By: [Signature]
Deputy District Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR IRON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

PATRICIA ANN SNYDER,

Defendant.

JURY INSTRUCTIONS

CASE NO. 991500604 FS

MEMBERS OF THE JURY:

It is my duty as Judge to instruct you concerning the law applicable in this case, and it is your duty as jurors to follow the law as I shall state it to you.

The function of the jury is to try the issues of fact that are presented by the allegations in the Information filed in this Court and the defendant's plea of "Not Guilty". You should perform this duty uninfluenced by pity for the defendant or by passion or prejudice against her. You must not suffer yourselves to be biased against the defendant because of the fact that she has been arrested or because an Information has been filed against her or because she has been brought before the Court to stand trial. None of these facts is evidence of her guilt and you are not permitted to infer or to speculate from any or all of them that she is more likely to be guilty than innocent.

INSTRUCTION NO. 1

You are to be governed in this case by the evidence submitted to you and the law as I state it to you. You may not consider mere sentiment, guesswork, sympathy, passion, prejudice, public opinion or public feeling in deciding the guilt or innocence of the defendant. Both the State of Utah and the defendant have a right to expect that you and each of you will conscientiously, seriously and impartially consider and weigh the evidence and properly apply the law to reach a just verdict, regardless of what the consequences of that verdict may be.

The verdict must express the individual opinion of each juror.

INSTRUCTION NO. 2

You are the exclusive judges of the facts and the effect, value and weight of the evidence produced in this case. You may consider any evidence which is admitted by me. You may not consider evidence which is excluded or which is admitted and later ordered by me to be stricken. Likewise, you may not consider as evidence statements of the attorneys or any hint or intimation of the truth or falsity of any fact or evidence made by the attorneys.

Statements, arguments and remarks of the attorneys are intended to help you understand the evidence and apply the law, but such statements are not evidence. You should disregard any statement of an attorney which has no basis in the evidence coming from witnesses, documents or stipulations received in evidence in this case.

Of course, if the attorneys stipulate to any fact or facts and that stipulation is accepted by me, you may regard the stipulated fact or facts as conclusively proven and shown without additional evidence.

INSTRUCTION NO. 3

Part of the Court's duty is to decide on the admissibility of evidence in this trial. These decisions are made purely on the basis of law. You are not to be concerned with the reasons for the Court's rulings, either admitting or excluding evidence, and you should draw no inferences from those rulings.

In admitting evidence, the Court does not rule on the weight or convincing force of the evidence, nor does it pass on the credibility of the witness or party offering the evidence. These matters are for you to decide.

If any objection to a question is sustained by the Court, you should disregard the question and not speculate or guess as to what the answer might have been or the reason for the objection.

INSTRUCTION NO. 4

It often occurs in trials that there is a conflict in the testimony or evidence presented by the parties. When such conflicts arise, it is your duty, if possible, to reconcile those conflicts by the use of logic and reason. However, if you cannot reasonably reconcile the conflicts, then it is your duty, if possible, to determine which version of the evidence you will believe or not believe, based on the believability of the witnesses, the other evidence in the case, and good reason. There are no definite rules on deciding what evidence you believe or do not believe or how much weight you will give to any evidence, but you should make that decision carefully and conscientiously. You are not bound to believe all that the witnesses have said or any witness or class of witnesses unless the testimony is reasonable and convincing in view of all the facts and circumstances in the case. You may believe one witness against many or many as against a few, in accordance with your honest convictions.

If you believe a witness has willfully testified falsely as to any material fact, you may disregard his entire testimony or any part of it, or give it that reduced weight to which you feel it is entitled.

You are further instructed that in deciding the weight and believability of the testimony of any witness, you should consider his bias or interest in the matter, and any motive shown, or lack thereof, to testify in a particular way. You may also consider the appearance and demeanor of the witness, the reasonableness of his statements, his truthfulness, his opportunity to know, his ability to understand and communicate, his capacity to remember, and any other facts relevant to his desire or ability to present accurate testimony.

You may also consider whether the witness was contradicted by other evidence or whether he contradicted himself. From all these factors, you should determine the weight and credibility you will give to the testimony of the witness.

INSTRUCTION NO. 5

The State of Utah and the defendant both are entitled to the individual opinion of each juror. It is the duty of each of you, after considering all the evidence in this case, to determine, if possible, the truth of the matter. When you have reached a conclusion in that respect, you should not change it merely because one or more or all of your fellow jurors may have come to a different conclusion. However, once the matter has been submitted to you for decision, each juror should freely and fairly discuss with his fellow jurors the evidence and the deductions to be drawn therefrom. If, after doing so, any juror should be satisfied that a conclusion first reached by him was wrong, he unhesitatingly should abandon that original opinion and render his verdict according to his final decision.

INSTRUCTION NO. 6

A defendant in a criminal action is presumed to be innocent until the contrary is proved and if there is a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to an acquittal. The effect of this presumption is to place upon the State the burden of proving him guilty beyond a reasonable doubt. However, the presumption of innocence follows him throughout the trial until the State has met its burden.

INSTRUCTION NO. 7

I have heretofore told you that the burden is upon the State to prove the defendant guilty beyond a reasonable doubt. Reasonable doubt means a doubt which is based on reason and one which is reasonable in view of all the evidence. It must be a reasonable doubt and not a doubt which is merely fanciful or imaginary or based on a wholly speculative possibility. A reasonable doubt is a doubt which reasonable men and women would entertain, and it must arise from the evidence or the lack of the evidence in this case.

Proof beyond a reasonable doubt does not require proof to an absolute certainty. Proof beyond a reasonable doubt is that degree of proof which satisfies the mind, convinces the understanding of those who are bound to act conscientiously upon it and obviates all reasonable doubt.

INSTRUCTION NO. 8

If the evidence in this case is susceptible of two constructions or interpretations, each of which appears to you to be reasonable and one of which points to the guilt of the defendant, while the other points to his innocence, it is your duty under the law to adopt that interpretation which will admit to the defendant's innocence and reject that which points to his guilt.

You will note that this rule applies only when both of the possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable conclusion and to reject the unreasonable, bearing in mind, however, that even if the reasonable deduction or conclusion points to the defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilty.

INSTRUCTION NO. 9

Before you may find Defendant Patricia Ann Snyder guilty of the offense of Theft, as charged in the Amended Information, the State must prove and you must find, unanimously and beyond a reasonable doubt, each and every one of the following elements:

1. That the Defendant, Patricia Ann Snyder, did obtain or exercise unauthorized control over the property of another;
2. That the Defendant, Patricia Ann Snyder, did have the purpose to deprive the other person of said property;
3. That the property had an aggregate value over \$1,000, but less than \$5,000; and
4. That such events took place on or about May 1999 - June 1999, in Iron County, State of Utah.

If the State of Utah has failed to prove any one or more of the previously described elements, you must find the Defendant not guilty of the offense of Theft, a Third Degree Felony as charged in the Amended Information. If the State has proved, however, each and every one of the foregoing elements to your satisfaction and beyond a reasonable doubt, then it is your duty to find the Defendant guilty of Theft as charged in the Amended Information.

If, and only if, you determine that the State has failed to prove the offense of Theft, a Third Degree Felony beyond a reasonable doubt, you must then consider whether the State has proven the Defendant guilty of Wrongful Appropriation, a Class A Misdemeanor, as defined in the following instruction.

INSTRUCTION NO. 10

Before you may find the Defendant, Patricia Ann Snyder, guilty of the ^{alternative} ~~lesser included~~ offense of Wrongful Appropriation, a Class A Misdemeanor, the State must prove and you must find, unanimously and beyond a reasonable doubt, each and every one of the following elements:

1. That the Defendant did obtain or exercise unauthorized control over the property of another;
2. Without consent of the owner or legal custodian;
3. With the intent to temporarily appropriate, possess, or use the property or to temporarily deprive the owner or legal custodian of possession of the property;
4. Said property having an aggregate value over \$1,000 but less than \$5,000; and
5. That said events occurred on or about May 1999 - June 1999 in Iron County, State of Utah.

If you believe the evidence establishes each and every one of the essential elements of the offense as stated above, beyond a reasonable doubt, it is your duty to convict the Defendant.

On the other hand, if the evidence has failed to establish one or more of the elements in the group of elements considered separately, then it is your duty to find the Defendant not guilty.

INSTRUCTION NO. 11

In these instructions certain words and phrases are used which require definitions in order that you may properly understand the nature of the crimes charged and in order that you may properly apply the law as contained in these instructions to the facts as you may find them from the evidence. These definitions are as follows:

You are instructed that a person engages in conduct with "intent" with respect to the nature of his conduct or to the result of his conduct, when it is his conscience objective or desire to engage in the conduct or cause the result.

You are instructed that "property" means anything of value, including money.

You are instructed that "obtain" means, in relation to property, to bring about a transfer of possession or of some other legally recognized interest in property.

You are instructed that "purpose to deprive" means to have a conscious objective;

a. To withhold property permanently or for so an extended period or to use under such circumstances that a substantial portion of its economic value, or the use and benefit, would be lost; or

b. To restore the property only upon payment of reward or other compensation;

c. To dispose of the property under circumstances that make it unlikely that the owner will recover it.

You are instructed that "possession" or "to possess" means ownership, control, occupancy, holding, retaining, belonging, or maintaining.

You are instructed that "appropriate" means the exercise of control over, or taking possession of property.

INSTRUCTION No. 12

You are instructed that under the laws of the State of Utah you must aggregate the value of any property that you find was the subject of a Theft or a Wrongful Appropriation. For purposes of this case you may only consider the values of property as it relates to Jackie Parrish and Renee Fallaha in order to reach the dollar amount that is required as an element of Theft or Wrongful Appropriation.

INSTRUCTION NO. 13

You are instructed that an effect which is the natural and probable consequence of an act or course of action is not accidental, nor is it produced by accidental means. It is either the result of actual design or it falls under the maxim that every man must be held to intend the natural and probable consequences of his deeds.

INSTRUCTION NO. 14

Two classes of evidence are recognized and admitted in courts of justice upon either or both of which a jury may base its findings, whether favorable to the State or to the defendant, provided, however, that to support a verdict of guilty, the evidence, whether of one kind or another or a combination of both, must carry the convincing quality required by law, proof beyond a reasonable doubt.

One type of evidence is known as "direct" and the other as "circumstantial". The law makes no distinction between the two classes of evidence but respects each for such convincing force as each may carry. For example, if the question is presented, "Did event A occur or not?", direct evidence would be presented by one who could testify that he saw event A occur or heard it occur. Circumstantial evidence would be presented by one who could testify that by investigating events and circumstances surrounding the occurrence, one could conclude that event A happened without seeing or hearing the event. The law allows proof by either direct or circumstantial evidence.

INSTRUCTION NO. 15

The defendant is a competent witness in his own behalf and his testimony should be received and given the same consideration as you give to that of any other witness. The fact that he stands accused of a crime is no evidence of his guilt and is no reason for rejecting his testimony. However, you should weigh his testimony the same as you weigh the testimony of any other witness under these instructions.

INSTRUCTION NO. 16

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of an expert witness. A person who, by education, study and experience, has become an expert in any art, science or profession, and who is called as a witness, may give his or her opinion as to any such matter in which he/she is versed and which is material to the case. You should consider such expert opinion and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 17

In every crime or public offense there must be a union or joint operation of the act and intent. The intent or intention is manifest by the circumstances connected with the offense and the sound mind and discretion of the accused.

A person is only guilty of an offense when his conduct is prohibited by law and he acts with the requisite mental intent.

INSTRUCTION NO. 18

I have already told you that you, as jurors, are the sole judges of all questions of fact in this case. You must determine what the facts are in this case for yourselves, from the evidence, and without regard to what you may believe I think the facts are. My opinion of facts is immaterial. If any statement, action or ruling of mine seemed to indicate that I held an opinion of any fact, that was unintentional, and you are hereby instructed to disregard that indication of my opinion entirely.

INSTRUCTION NO. 19

In some places the instructions I have given refer to masculine pronouns, such as "he", "him" or "himself". You should read those pronouns to include the feminine pronoun, if applicable. The male pronoun is used for the sake of simplicity in these instructions and is meant to include all those to whom the instruction might apply, whether male or female.

INSTRUCTION NO. 20

You are instructed that you should not consider the possible penalties for the offenses of which the defendant stands accused in reaching your determination as to whether the defendant is guilty or not guilty. The possible penalty is irrelevant.

It is the duty of the jury to determine whether, given the facts in evidence, the defendant violated the law. It is the duty of the Court to determine what, if any, penalty should be imposed if the jury finds that the defendant has violated the law.

INSTRUCTION NO. 21

If, in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me and none should be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and are to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 21

The attitude and conduct of jurors at the beginning of their deliberations are matters of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his or her sense of pride may be aroused, and he or she may hesitate to recede from an announced position, even if shown that it is incorrect. Remember that you are not partisans or advocates in this matter but are judges. What is important is the verdict which you return to the Court, not the opinions any of you may hold as you retire.

INSTRUCTION NO. 23

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the bailiff, signed by your foreperson, or by one or more members of the jury. No member of the jury should attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing, or orally here in open court.

Bear in mind also that you are never to reveal to any person . . . not even to the Court . . . how the jury stands, numerically or otherwise, until you have reached a verdict or until specifically ordered to do so by the Court.

INSTRUCTION NO. 24

When you retire to deliberate, you should appoint one of your fellow jurors to act as foreperson, who will preside over your deliberations and who will sign the verdict to which you agree. In criminal cases a unanimous concurrence of all jurors is required before a verdict can be reached. Your verdict must be in writing and, when found by you, must be returned into Court. A verdict form has been prepared for your consideration in this case. Your foreperson will sign the verdict which correctly reflects the result of your deliberations. Your choice of verdicts is as follows:

COUNT I: We, the jury, duly empaneled in the above-entitled action, find the defendant **GUILTY** of the offense of Theft, a 3rd-Degree Felony.

YES

OR IN THE ALTERNATIVE,

COUNT I: We, the jury, duly empaneled in the above-entitled action, find the defendant **GUILTY** of the offense of Wrongful Appropriation, a Class A Misdemeanor.

YES

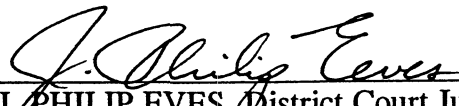
OR

We, the jury, duly empaneled in the above-entitled case, find the defendant **NOT GUILTY**, as the offense is unproven by the burden of evidence required.

YES

The jury foreperson should mark only one "YES".

DATED this 25th day of May 2000.


J. PHILIP EVES, District Court Judge

PAUL A. BITTMENN – USB #8145
Deputy Iron County Attorney
97 North Main, Suite #1
P.O. Box 428
Cedar City, Utah 84720
Telephone: (801) 586-6694
Telecopier: (801) 586-2737


IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,
STATE OF UTAH

STATE OF UTAH,	)	TESTIMONIAL AFFIDAVIT OF
		RENEE' ANN FALLAHA
Plaintiff,)	
Vs.)	
PATRICIA ANN SNYDER,	)	Criminal No. 991500604
Defendant.	)	Judge Robert T. Braithwaite

STATE OF UTAH)
 :ss.
COUNTY OF IRON)

COMES NOW Renee' A. Fallaha, your affiant, and after knowingly and intelligently consenting to the jurisdiction of the Fifth Judicial District Court, in and for Iron County, State of Utah; and after first being duly sworn under oath, and deposes and states as follows, to wit:

1. That your affiant is an adult female, a computer technician and general manager of MPI Computers in Long Beach, California, is 43 years of age, and resides in Long Beach, California, and has personal knowledge of the statements set forth herein or has made statements based on information and belief from discussing the contents of this



affidavit with Sergeant Kelvin Orton of the Cedar City Police Department and from corresponding with the Cedar City Police via email.

2. That your affiant did participate in an Ebay auction May 22, 1999. Further, that your affiant bid on item number 106740176, said item being a 1968 Nolan Ryan Rookie Card number 177 made by The Topps Corporation and said to be “ a beautiful piece to add to any collection”. (See exhibit #1)

3. Your affiant asserts that before making her bid on the above described item she did check the Ebay customer feedback that was left regarding the seller, identified to her as TASCSD (this being the computer name used by the seller later being identified as Patricia Snyder.) (See exhibit #2) Further, your affiant asserts that feedback left by 169 previous Ebay buyers for TASCSD led her to believe that she was a reliable seller. In fact out of 169 prior transactions, there was no negative feedback. Also, your affiant asserts that she sent email to the seller to ask questions regarding the Nolan Ryan rookie card, and was informed by the seller that she did in fact have the Rookie Card in her possession and that it was “A fine and rare specimen for an older card” with All four corners on the card are sharp”. (See exhibit #3A & 3B)

4. Your affiant asserts that on May 23, 1999, she was informed by an email the she had in fact won the auction for the Nolan Ryan rookie card. (See exhibit # 4) She received this information through an email sent to her by Trish Snyder <TASCSD@netutah.com>. The winning bid for the auction was six hundred and sixty dollars (\$660.). Your affiant asserts that at this time she received assurances from the seller that led her to believe that she did in fact possess the aforementioned Nolan Ryan rookie card. (See exhibit # 4) The seller, Ms Snyder, advertised she had possession of the

card by posting a photo on the auction and with description of the card being "A fine and rare specimen for an older card" with "All four corners on the card are sharp". (See exhibit #1)

5. Your affiant asserts that on May 24th, 1999, she did send a Official Bank check, check no. 2014136292, in the amount of six-hundred and fifty-five dollars (\$655) to Trish Snyder. (see exhibit # 5) Your affiant asserts that Official check no. 2014136292 was sent to Trish Snyder 955 West 400 North, Cedar City, Utah 84720. Your affiant asserts that the above-referenced check was sent via certified mail, return receipt requested, U. S. Postal Service no. Z584838174. Further, receipt no 2584838174 was returned to your affiant on or about June 1st, 1999, with the signature of Ms. Snyder affixed thereto. (See exhibit # 6) Also your affiant received an email from Trish Snyder "that she got the money order and the item would be shipped the following day. (See exhibit #7) Finally, that Official Check no. 2014136292 cleared you Affiant's account on June 3, 1999. (See exhibit #8A & 8B)

6. Your affiant asserts that after receiving the postal receipt indicating that the check had arrived on or about May 27th, 1999, and not having yet received her Nolan Ryan rookie card, that she made various attempts to contact Ms. Snyder. Your affiant asserts that she sent an email to Ms. Snyder at her e-mail address on or about June 8th, 1999 (See exhibit #9). Your affiant asserts that said email went unanswered. Also, your affiant asserts that she did attempted to track down information regarding Trish Snyder from Ebay, from Trish Snyder Web site (see exhibit # 10A & 10B) and the phone number for Trish Snyder living in Cedar City, Utah, by calling 435-555-1212. Your affiant asserts that she was given the phone number for Trish Snyder residing in Cedar City, Utah, as

435-568-0556. Your affiant asserts she made many attempts from June 4th, 1999 to June 9th, 1999 to contact Ms. Snyder by calling her at her telephone number also via email. Your affiant asserts that the number was disconnected or not in working order and there was no response from Ms. Snyder via email.

7. Your affiant asserts that on or about June 8th, 1999, she did contact the Cedar City Police Department. Your Affiant asserts that he spoke with Sergeant Kelvin Orton. Your affiant asserts that Sergeant Orton indicated to her that there had been other complaints regarding Ms. Snyder and her Ebay auction activities. Your affiant asserts that based on her own concerns that she had not yet received the Nolan Ryan rookie card and that she had been unable to contact Ms. Snyder, she did file a complaint with the Cedar City Police Department.

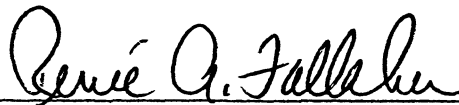
8. Your affiant asserts that on June 10th, she was finally able to communicate with Ms. Snyder. Your affiant asserts that on said date she received a telephone call from Ms. Snyder. Your affiant asserts that Ms Snyder offered to pay back the six hundred and fifty-five dollars (\$655) that she had sent for the Nolan Ryan rookie card. Your affiant asserts that she asked Ms. Snyder why she had not received the Nolan Ryan rookie card, and Ms. Snyder replied "she was suppose to get all our cards and thinks in question and then send them out to us and that was what all the mix up was and she never received them to give to us." (See exhibit #11). Further, your affiant asserts that Ms. Snyder made no explanation as to why she did not indicate in her original auction listing that the card was not in her possession. In fact Ms. Snyder, when questioned regarding the quality of the Nolan Ryan rookie card on 5/20/99 Ms. Snyder replied, "that the corners were sharp", which lead me to believe she had the card in her possession. (See exhibit #3A)

9. Your affiant asserts that on or about June 14th, 1999, she did receive a refund cashier's check in the amount of six hundred and sixty-five dollars (\$655.) (See exhibit 12) Your affiant asserts that on or about May 25, 1999, she did cash said refund cashier's check and that said refund cashier's check did actually clear the bank.

10. Your affiant asserts that she has been involved with many auctions on Ebay over the past year. Your affiant asserts that with almost all items she has purchased, it usually takes approximately five (5) to ten (10) business days after the payment is received by the seller for the buyer to receive the item. Your affiant further asserts all Ebay sellers, she has dealt with, have in the possession at the start of auction the item they have for sale. Further, your affiant asserts that at no time during the auction, or at the time your affiant was informed that she won the auction, did the above-named Defendant indicate that the Nolan Ryan rookie card was not in her possession.

FURTHER YOUR AFFIANT SAITH NOT.

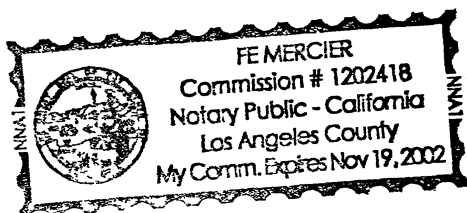
DATED this 15th day of September, 1999.



RENEE A. FALLAHA

Affiant

Subscribed and sworn/affirmed to before me on this 16 day of September, 1999.





Notary Public

My Commission Expires 11-19-02



[Home](#) [Listings](#) [Buyers](#) [Sellers](#) [Search](#) [Help](#) [News/Chat](#) [Site Map](#)

Test drive the [new site](#). Check out the new Help section!

Save time! Try the new, fun way to shop -- the [Gallery](#).

Exhibit #

68 Topps Nolan Ryan Rookie Card #177 PSA ???

Item #106740176

[Sports Memorabilia](#): [Trading Cards](#): [Baseball](#): [Rookies](#)

Bidding is closed for this item.



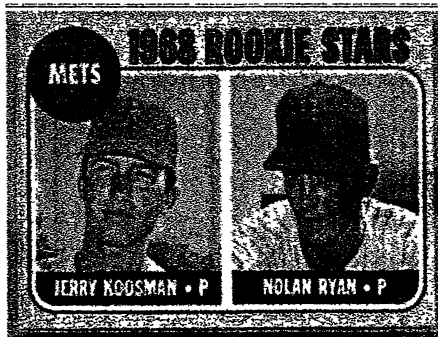
(to seller)
(to bidder)

Currently	\$660.00	First bid	\$9.99
Quantity	1	# of bids	22 (bid history) (with emails)
Time left	Auction has ended.	Location	Utah
Started	05/19/99, 23:10:36 PDT		(mail this auction to a friend)
Ends	05/22/99, 23:10:36 PDT		(request a gift alert)
Seller	tascd (177) ☆ (view comments in seller's Feedback Profile) (view seller's other auctions) (ask seller a question)		
High bid	zelle5 (48) ☆		
Payment	Money Order/Cashiers Checks		
Shipping	See item description for shipping charges		
Relist item	Seller: Didn't sell your item the first time? eBay will refund your relisting fee if it sells the second time around. Relist this item .		

Seller assumes all responsibility for listing this item. You should contact the seller to resolve any questions before bidding. Currency is dollar (\$) unless otherwise noted.

Description

This is a 3 day auction for a 1968 Topps Nolan Ryan Rookie Card #177. It is a beautiful piece to add to any collection. See scan below. Please email with any questions. As always there is no reserve. High bidder agrees to shipping. Payment due no later than 7 days after auction close. Serious bidders only!!! Good Luck and Happy Bidding!!!



Bidding

Bidding is closed for this item.

From: Trish Snyder <tascd@netutah.com>
To: Renee' Fallaha <renee@mpicomputers.com>
Date: Thursday, May 20, 1999 1:40 PM
Subject: Re: Item #106740176

Exhibit #3A

Hi,

All four corners on the card are sharp. A fine and rare specimen for an older card.

Trish

Renee' Fallaha wrote:

How re the corners?

From: Trish Snyder <tascd@netutah.com>
To: annie <annie@mpicomputers.com>
Date: Thursday, May 20, 1999 2:04 PM
Subject: Re: Would you be willing to use Ebay's Escrow

Exhibit 3B

Hi,

The bidder sends me the payment using certified mail. I have to sign for the letter, giving proof to the bidder that I had in fact received it. I then include with the item, the amount that it cost the bidder to send certified. I send the item back insured and certified, giving me proof that you received it. It has worked so far, and bidders like the fact that it is a little quicker than escrow and that both parties have some protection.

Trish

annie wrote:

I understand your concern. How would certified mail would work in this case. My user name is zelle5 and you can see I've never had any problem paying for what I win...I have used Escrow for a DVD player and the seller was quite happy...Thanks, Annie

-----Original Message-----

From: Trish Snyder <tascd@netutah.com>
To: annie <annie@mpicomputers.com>
Date: Thursday, May 20, 1999 1:43 PM
Subject: Re: Would you be willing to use Ebay's Escrow

Hi,

All four corners are sharp. I have tried escrow in the past and got burned by the bidder, and then the item was stuck in escrow for weeks. I prefer to offer certified mail at my cost to the bidder, then if they don't send payment I have options with the item.

Thanks for the questions,
Trish

annie wrote:

on Nolan Ryan Rookie card Item #106740176? How are the corners on this card?

Exhibit # 4

From: Annie <annie@mpicomputers.com>
To: annie <annie@mpicomputers.com>
Date: Sunday, May 23, 1999 8:52 PM
Subject: Fw: Ebay #106740176 Nolan Ryan RC

----- Original Message -----

From: Trish Snyder <tascd@netutah.com>
To: <annie@mpicomputers.com>
Sent: Sunday, May 23, 1999 8:39 PM
Subject: Ebay #106740176 Nolan Ryan RC

> Hello,
>
> You are high bidder on the above auction. Please send check (10
> business day hold period) or money order, cashiers check (next day
> service) in the amount of \$665.00 (\$5.00 shipping with USPS insured
> mail) to:
>
> Trish Snyder
> 955 West 400 North
> Cedar City, Utah 84720
>
> For your protection as well as mine, if you would send the payment
> certified through the USPS I will reimburse the extra charge. Please
> include either a copy of this letter or some other indication of the
> item that you are purchasing. Thanks again for bidding, and I will
> leave positive feedback upon receipt of payment.
>
> Please respond to this message, so that I can ensure that it got
> through, and include your address so I can get the package ready for
> shipping. If payment is not received by June 3, 1999 I will leave
> negative feedback, and take further eBay action.
>
> Thanks again,
> Trish
>
>
>
>
>
>

6/8/99

VOID AFTER 90 DAYS

11-35/1210

2014136292



Bank of America

Issuer: BankAmerica Corporation or
Bank of America NT&SA, San Francisco, California

IF THE AMOUNT OF THIS CHECK EXCEEDS \$10,000 IT IS DRAWN ON AND
PAID BY BANK OF AMERICA NT&SA, SAN FRANCISCO, CALIFORNIA

MATCH THE AMOUNT IN WORDS WITH THE AMOUNT IN NUMBERS



BANK OF AMERICA
\$5500
SIX THOUSAND FIFTY FIVE DOLLARS AND 00 CENTS

***** MAY 24 1999 ***** SIX THOUSAND FIFTY FIVE DOLLARS AND 00 CENTS

Pay To The *****TRISH SNYDER*****
Order Of

FEE COLLECTED

PURCHASER:
RENÉE FALLAH

VOID OVER \$650.00

135

Official Check
ISSUED IN US DOLLARS

Signature of Purchaser

41-2014136292

80 11 1999

NONNEGOTIABLE

PURCHASER COPY

NOTICE: This copy is your receipt and you should save it. If your check is lost, stolen or destroyed before the void date, you may be required to sign an indemnity agreement before we will provide a refund or replacement. Stamps may be placed at any time after purchase. However, you will not be entitled after 90 days from the purchase date provided that we are not otherwise required to pay the item or hold the funds. To obtain information regarding this check or to report a loss, contact Bank of America NT&SA San Francisco, California at (800) 217-4038.

Z 584 838-174

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	Trish Snyder
Street & Number	455 West 400 North
Post Office, State, & ZIP Code	Cedar City, Utah 84700
Postage	\$0.33
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	125
Return Receipt Showing to Whom Date, & Addressee's Address	
TOTAL Postage & Fees	
Postmark or Date	

PS Form 3800, April 1995

LONG BEACH GNF STATION
LONG BEACH, California

908099712

4/1999 (800)275-8777 02:33:02 PM

uct	ription	Sale Qty	Unit Price	Final Price
tamp		1	\$2.65	\$2.65
		50	\$0.01	\$0.50
				\$3.15

1:

by:

by:

\$3.15

#: 1000400186895

k: 01

— Thank you for your business —

5 # 19.417

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you
- Attach this form to the front of the mailpiece, or on the back if space does not permit
- Write "Return Receipt Requested" on the mailpiece below the article number
- The Return Receipt will show to whom the article was delivered and the date delivered

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee

3. Article Addressed to:

Trish Snyder
955 West 400 North
Cedar City, Utah 84720

4a. Article Number

2 584838174

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5-27-99

5. Received By: (Print Name)

6. Signature (Addressee or Agent)

X *[Signature]*

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

102595-98 B-0229

Domestic Return Receipt

Exhibit #6



PLP

Kevin Falkner
3232 E. Willow St
Signal Hill, CA 90806

● Print your name, address, and ZIP Code in this box

First-Class Mail[®]
Postage & Fees Paid
USPS
Permit No. G-10



UNITED STATES POSTAL SERVICE

Exhibit #7

From: Annie <annie@mpicomputers.com>
To: annie <annie@mpicomputers.com>
Date: Tuesday, June 01, 1999 9:54 PM
Subject: Fw: Ebay #106740176 Nolan Ryan RC

----- Original Message -----

From: Trish Snyder <tascd@netutah.com>
To: Annie <annie@mpicomputers.com>
Sent: Tuesday, June 01, 1999 8:00 PM
Subject: Re: Ebay #106740176 Nolan Ryan RC

> Hi,
>
> Got the money order. Item will be shipped tomorrow morning.
>
> Thanks again,
> Trish
>
> Annie wrote:
>
> > Hello and thanks for the response;
> >
> > My user name is zelle5
> >
> > please send to
> >
> > Renee A. Fallaha
> > 3232 E. Willow St.
> > Signal Hill, CA. 90806
> > ----- Original Message -----
> > From: Trish Snyder <tascd@netutah.com>
> > To: <annie@mpicomputers.com>
> > Sent: Sunday, May 23, 1999 8:39 PM
> > Subject: Ebay #106740176 Nolan Ryan RC
> >
> > > Hello,
> > >
> > > You are high bidder on the above auction. Please send check (10
> > > business day hold period) or money order, cashiers check (next day
> > > service) in the amount of \$665.00 (\$5.00 shipping with USPS insured
> > > mail) to:
> > >
> > > Trish Snyder
> > > 955 West 400 North
> > > Cedar City, Utah 84720
> > >

6/8/99

> > > For your protection as well as mine, if you would send the payment
> > > certified through the USPS I will reimburse the extra charge. Please
> > > include either a copy of this letter or some other indication of the
> > > item that you are purchasing. Thanks again for bidding, and I will
> > > leave positive feedback upon receipt of payment.
> > >
> > > Please respond to this message, so that I can ensure that it got
> > > through, and include your address so I can get the package ready for
> > > shipping. If payment is not received by June 3, 1999 I will leave
> > > negative feedback, and take further eBay action.
> > >
> > > Thanks again,
> > > Trish
> > >
> > >
> > >
> > >
> > >
> > >
> > >
>
>

P.O. BOX 3530
RANCHO CORDOVA, CA 95741-3530

YOUR BANK OF AMERICA
PHOTOCOPY REQUEST

Exhibit #8B

RENEE FALLAHA
3232 EAST WILLOW STREET
SIGNAL HILL

CA 90806

DATE OF NOTICE: 10-JUN-99
ACCOUNT NUMBER: 13977-84016
CHECK NUMBER: 02014136292
CHECK AMOUNT: 655.00/USD
DATE POSTED: 03-JUN-99
REFERENCE ID: 02061607
0 00
REQUESTING UNIT: 03870
ANTOY 08182-08JUN99
D

DEAR CUSTOMER:

YOUR PHOTOCOPY REQUEST FOR THE ACCOUNT NUMBER SHOWN ABOVE HAS BEEN PROCESSED
IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE 24 HOUR CUSTOMER SERVICE
TELEPHONE NUMBER LISTED ON YOUR ACCOUNT STATEMENT.

THANK YOU FOR GIVING US THE OPPORTUNITY TO SERVE YOUR BANKING NEEDS.

Exhibit #9

Renee' Fallaha

From: annie <annie@mpicomputers.com>
To: Trish Snyder <tascd@netutah.com>
Sent: Tuesday, June 08, 1999 12:00 PM
Subject: Hi Annie here

I haven't gotten the card and was wondering if you could trace it to see if it's lost. I am still excited about getting it. Thanks, Annie

09/14/1999

[illegible]

THE UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
BUREAU OF CUSTOMS AND BORDER PROTECTION
OFFICE OF THE COMMISSIONER
WASHINGTON, D.C. 20540
TELEPHONE (202) 344-3111
FAX (202) 344-3112
WWW.CBP.DHS.GOV

PAUL A. BITTMENN - USB #8145
Deputy Iron County Attorney
97 North Main, Suite #1
P.O. Box 428
Cedar City, Utah 84720
Telephone: (801) 586-6694
Telecopier: (801) 586-2737


IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,
STATE OF UTAH

STATE OF UTAH,	)	TESTIMONIAL, AFFIDAVIT OF
		JACKIE PARRISH
Plaintiff,)	
vs.		
PATRICIA ANN SNYDER,	)	Criminal No. 991500604
Defendant.	)	Judge Robert T. Braithwaite

STATE OF UTAH)
 : ss.
COUNTY OF IRON)

COMES NOW Jacquelyn Parrish, your affiant, and after having knowingly and intelligently consenting to the jurisdiction of the Fifth Judicial District Court in and for Iron County, State of Utah; and after first being duly sworn under oath, and deposes and states as follows, to wit:

1. That your affiant is an adult female, Executive Director of the Mohave Workforce Development Partnership in Mohave County, Arizona, is 54 years of age, resides in Lake Havasu City, Arizona, and has personal knowledge of the statements set forth herein or has made statements based on information and belief from discussing the contents of this affidavit with Sergeant Kelvin Orton of the Cedar City Police Department and from corresponding with the Cedar City Police via email.



2. That your affiant did participate in eBay auctions ending on May 19 and May 21, 1999. Further, that your affiant did bid on item number 105358666, said item being a Steg the Stegosaurus (1st Gen) MWM (mint with mint tags) Ty beanie baby and item number 106210568, said item being a **RARE** Humphrey the Camel (2nd Gen) MWM Ty beanie baby.

3. Your affiant asserts that before making her bid on the above described items she did check the eBay customer feedback that was left regarding the seller, identified to her as TASC (this being a computer name used by the seller later being identified as Patricia Snyder.) Further, your affiant asserts that feedback left by previous buyers from TASC led her to believe that she was a reliable seller. In fact, TASC had over 200 positive feedbacks regularly submitted over the past months and years. The auction description stated that each beanie was in museum condition with mint condition swing tag as well as a perfect tush tag, stored in an acrylic case with a plastic tag protector. Also, your affiant asserts that she sent email to the seller to ask the seller questions regarding each of the two beanie babies, and was informed by the seller that she was "the original owner and bought them from a Ty authorized dealer." She also stated via email that the beanies would all come with the "Real Beans" Certificate.

4. Your affiant asserts that on May 20, 1999, she was informed by an email that she had in fact won the auction for the Steg. The winning bid for this auction was three hundred ninety-one dollars and nine cents (\$391.09). She was again notified on May 22, 1999 that she had in fact won the auction for the Humphrey. The winning bid for this auction was one thousand, one hundred twenty-six dollars (\$1,126). She received this information through emails sent to her by TASC. Your affiant asserts that at this time she received assurances from the seller that led her to

believe that she did in fact possess the aforementioned Steg and Humphrey Ty beanie babies. Specifically, the seller advertised she had possession of the beanie and would send it next day service of either money order or cashiers check receipt. Further, your affiant asserts that at the time she was informed she won the auction she was also informed that payment must be received by May 31, 1999 or the seller would leave negative feedback and take further eBay action. The auction description specifically stated payment was due no later than 10 days after auction close. Also, your affiant was directed to send payment certified through the USPS and was to pay shipping charges.

5. Your affiant asserts that on May 25, 1999, she did send a money order, no. 896344048, in the amount of one thousand five hundred twenty-seven dollars and nine cents (\$1,527.09) to Trish Snyder (see Exhibit No. 1). Your affiant asserts that money order no. 896344048 was sent to Trish Snyder at 955 West 400 North, Cedar City, Utah 84720. Your affiant asserts that the above-referenced money order was sent via certified mail, return receipt requested, U.S. Postal Service tracking no. z 320 452 527. Further, receipt no. z 320 452 527 was returned to your affiant on or about May 29, 1999, with an addressee signature affixed thereto. (See Exhibit #2) Finally, that money order no. 896344048 was cashed on June 1, 1999.

6. Your affiant asserts that after receiving the postal receipt indicating that the money order had arrived on May 28, 1999, and not having yet received her Steg and Humphrey beanie babies, that she made various attempts to contact Ms. Snyder. Your affiant asserts that she sent an email to Ms. Snyder at her email address on June 1, 1999. Your affiant asserts that said email went unanswered. Your affiant further asserts that she sent three emails on June 4, 1999, two on June 5, 1999, and one on June 6, 1999, all of which went unanswered. Also, your affiant asserts

that she did attempt to track down the phone number for Patricia Snyder living in Cedar City, Utah, by first requesting this information from eBay. Upon trying to call that number, your affiant was notified that that phone number had been disconnected. Your affiant then called directory assistance in Utah with the name and address of Patricia Snyder and got the new phone number. Your affiant asserts that she was given the phone number for Patricia Snyder residing in Cedar City, Utah, as 435-867-8728. Your affiant asserts she made attempts multiple times a day from June 5, 1999, through and including June 7, 1999, to contact Ms. Snyder by calling her at her telephone number. Your affiant asserts that on most occasions she was routed to an answering machine, and a couple of times the phone simply rang without answer. Affiant further asserts that she did call and leave messages at different times of the day.

7. Your affiant asserts that on or about June 7, 1999, she did contact the Cedar City Police Department. Your affiant asserts that she spoke with Sergeant Kelvin Orton and then Officer Troy Blanchard. Your affiant asserts that Sergeant Orton and Officer Blanchard indicated to her that there had been another complaint regarding Ms. Snyder and her eBay auction activities. Your affiant asserts that based on her own concerns that she had not yet received the Steg and Humphrey beanie babies and that she had been unable to contact Ms. Snyder, she did file a complaint with the Cedar City Police Department.

8. Your affiant asserts that on or about June 10, 1999, she was finally able to communicate with Ms. Snyder. Your affiant asserts that on said date she received a telephone call from Ms. Snyder. Your affiant asserts that Ms. Snyder offered to pay back the one thousand five hundred twenty-seven dollars and nine cents (\$1,527.09) that she had sent for the Steg and Humphrey beanie babies. Your affiant asserts that she asked Ms. Snyder why she had

not received the Steg and Humphrey beanie babies, and Ms. Snyder replied that she had, in fact, not yet received the beanies from where she had bought them. Further, your affiant asserts that Ms. Snyder made no explanation as to why she did not indicate in her original auction description that the beanies were not in her possession. In fact, her email message that she was "the original owner and bought them from a Ty authorized dealer" indicated she had them at the time of the auction.

9. Your affiant asserts that on June 14, 1999, she did receive a refund check in the amount of one thousand five hundred twenty-five dollars and nine cents (\$1,525.09). The refund was made by a Southern Utah Federal Credit Union check no. 063394508. Also included was a second money order #93272104046 in the amount of six dollars and forty cents (\$6.40), with a note attached stating "\$5.00 + \$1.40 certified \$6.40 refund. Your affiant asserts that copies of these checks are attached hereto and incorporated as Exhibit No. 3. Your affiant asserts that on June 14, 1999, she did cash said refund checks and that said refund checks did actually clear the bank.

10. Your affiant asserts that she has been involved with hundreds of auctions on eBay over the past year. Your affiant asserts that of the hundreds of items she has purchased, it usually takes approximately three (3) to five (5) business days after the check is received by the seller for the buyer to receive the item. Your affiant further asserts that she has dealt with auctioneers that advertise their goods as being "a pre-sale" or as having to be sent to the factory for authentication. Your affiant asserts that when bidding in a pre-sale or a "have to be authenticated" auction, it is your affiant's practice to bid less or not bid at all than if your affiant believes the item is readily available and will be sent to her immediately upon receipt of the check. Further, your affiant asserts that at no time during

the auction, or at the time your affiant was informed that she won the auction, did the above-named Defendant indicate that the Steg or Humphrey was a pre-sale, or that the beanie babies had to be sent to Real Beans in order to be authenticated as original Steg and Humphrey Ty beanie babies.

FURTHER YOUR AFFIANT SAITH NOT.

DATED this 13th day of September, 1999.

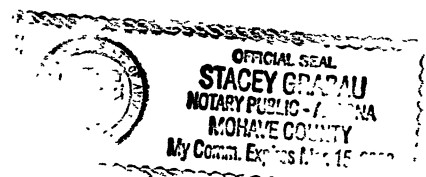


JACKIE PARRISH
Affiant

Subscribed and sworn/affirmed to before me on this 13th day of September, 1999.



Notary Public
My Commission Expires 3-15-03



THE FACE OF THIS DOCUMENT HAS A BLUE GRADUATING LINE (BLUE WHITE STRIVE) BACKGROUND ON WHITE PAPER

BANK ONE
BANK ONE, ARIZONA, NA

8560
6.3

OFFICIAL CHECK

896344048

16-2858
1220

Remitter **JACKIE PARRISH**

Date **MAY 25 1999**

BANK ONE
ARIZONA, NA

Pay To The Order Of *****TRISH SNYDER*****

1.527 dol's 09 cts

03 17476 16552088 12 357 09***
RMP 060299-02-98 8 (AS)

Drawer **BANK ONE, ARIZONA, NA**

Patricia Snyder

Payable through Citibank Inc. for Federal Reserve Bank of New York (NY State) Buffalo, NY
Issued by Integrated Payment Systems Inc. Englewood, Colorado

THE BACK OF THIS DOCUMENT CONTAINS A REFLECTIVE SECURITY MARK, HOLD AT AN ANGLE TO VIEW

1240-0081-3

122029587668099090 896344048 #0000152709

0012109578 05/01/1999
0081

1

1220-0081-3

72407702
First Data Corp.
62763785

94-191

WARNING - DO NOT CASH CHECK WITHOUT NOTING SECURITY MARK ON BACK. HOLD AT ANGLE TO LIGHT TO VERIFY SECURITY MARK.

THE CHECK AND BACK NUMBER SHOULD APPEAR RED FROM THIS SIDE.

Trish Snyder Snyder

3000

1666

Exhibit #1

Copies of my cashed payment

Z 320 452 527

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to <i>Trish Snyder</i>	
Street & Number <i>955 West 400 North</i>	
Post Office, State, & ZIP Code <i>Cedar City, Utah 84720</i>	
Postage	\$ <i>55</i>
Certified Fee	<i>1.40</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	<i>1.25</i>
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ <i>3.20</i>
Postmark or Date	<i>MAY 25 1999</i>

PS Form 3800, April 1995

USPS CEDAR CITY UT 84720

Exhibit
2

Is your RETURN ADDRESS completed on the reverse side?	SENDER: <input type="checkbox"/> Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b. <input type="checkbox"/> Print your name and address on the reverse of this form so that we can return this card to you. <input type="checkbox"/> Attach this form to the front of the mailpiece, or on the back if space does not permit. <input type="checkbox"/> Write "Return Receipt Requested" on the mailpiece below the article number. <input type="checkbox"/> The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery	
	3. Article Addressed to: <i>Trish Snyder</i> <i>955 West 400 North</i> <i>Cedar City, Utah</i> <i>84720</i>		4a. Article Number <i>Z 320 452 527</i>	
			4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
	5. Received By: (Print Name)		7. Date of Delivery <i>5-28</i>	
	6. Signature (Addressee or Agent) <i>Trish Snyder</i>		8. Addressee's Address (Only if requested and fee is paid)	

PS Form 3811, December 1994

102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.

OFFICIAL CHECK

063394508

Southern Utah Federal Credit Union

PAY ****ONE THOUSAND FIVE HUNDRED TWENTY FIVE DOLLAR(S) AND 09 CENT(S) \$1525.09

TO THE ORDER OF JACKIE PARRISH

FROM TRISH SNYDER

Drawer: Southern Utah Federal Credit Union

Authorized Signature

used By Integrated Payment Systems Inc., Englewood, Colorado
of its Fargo Bank Ltd N A, Los Angeles, CA

⑈8000000000⑈ ⑆122037171⑆8 029981 063394508⑈

VARIABLE TONE BACKGROUND AREA OF THIS DOCUMENT CHANGES COLOR GRADUALLY AND SMOOTHLY FROM DARKER TONES AT BOTH TOP AND BOTTOM TO THE LIGHTEST TONE IN THE MID

TRAVELERS EXPRESS
INTERNATIONAL MONEY ORDER

75 53
919

93272104046

PAY TO THE ORDER OF Jackie Parrish

PURCHASER, BY SIGNING YOU AGREE TO THE SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE

Trish Snyder

PURCHASER, SIGNER FOR DRAWER

955W.400W. Cedar City UT 84720

Payable Thru Northwest Bank
Min. So. N.A. Faribault, MN

ADDRESS

ISSUER/DRAWER
TRAVELERS EXPRESS COMPANY, INC.

IMPORTANT - SEE BACK BEFORE CASHING

PAY ONLY THIS AMOUNT

⑆091900533⑆932 72104046⑈ 90

Exhibit # 3

1 A. Yeah, I started the academy April 12th in (inaudible)
2 division.

3 Q. Okay, and while you're under supervision, do you
4 report to him regularly?

5 A. Yeah, all the time involved in it.

6 Q. I don't mean to sound rude or anything, but you
7 basically just hang around with him, don't you?

8 A. Yeah.

9 Q. You follow him everywhere?

10 A. Yeah.

11 Q. Okay. During that period of time were you made aware
12 of the matter that we're before the Court today?

13 A. Yes.

14 Q. Okay. Please tell the jury how your investigation
15 started.

16 A. Okay. It first started June 8th, where office had
17 received a call from Renee Fallaha. She stated one (inaudible)
18 this had taken place. She went on to explain that she had
19 purchased a Nolan Ryan rookie card, and sent a check for \$255
20 to an address in Cedar City. She stated that --

21 MR. HOLM: I'm going to object to this hearsay, your
22 Honor.

23 THE COURT: Sustained.

24 Q. BY MR. BITTMENN: Okay. After you got the complaint
25 from Ms. Fallaha, what happened? What did you do?

1 Exhibit 18 and 19.

2 THE COURT: Any objection?

3 MR. HOLM: I thought that one that she just read from
4 was 20. I just wanted to make sure I wasn't mistaken.

5 MR. BITTMENN: The e-mail is 19. The Ebay was --

6 MR. HOLM: Okay, no objection, then.

7 THE COURT: It's received, 18 and 19.

8 (Exhibit Nos. 18 and 19 are received into evidence.)

9 Q. BY MR. BITTMENN: In your prior dealings with auctions
10 on Ebay, have you found that there's any typical method to the
11 payment?

12 A. Typical was to win the bid, send the money. My only
13 experience has been a low -- low amounts of money. I had one
14 higher amount of money -- actually two before this, and the
15 only way I would do it, and the only way I would feel
16 comfortable, is to use the escrow method in Ebay. What that is
17 -- if I could explain.

18 Q. Sure.

19 A. What that is is that you send your money to Ebay,
20 which is the site. They hold onto the money in an escrow
21 account until you receive the item, you look it over, you have
22 between two and three days -- I think that's the maximum -- to
23 look over the items, decide if it's what they said it was. If
24 it is, you e-mail Ebay. Ebay then sends you -- sends the
25 seller the money, and you keep the item. If it doesn't, and

1 it's not up to standard, you send it back to the seller. The
2 seller then sends Ebay an e-mail, saying that they received it
3 back.

4 Q. And then if you don't send an e-mail to the Ebay
5 corporation within that what, two, three, four-day period, what
6 happens?

7 A. Under my understanding, they release the buyer's money
8 to the seller.

9 Q. So if you don't say anything, the seller gets the
10 money?

11 A. That's correct, and my prior experience was for a DVD
12 player, and the amount of money was I think around \$300, and I
13 didn't feel comfortable. The buyer had no problem going --
14 you know, allowing me to go through escrow. It costs the
15 seller no money. It costs the buyer a certain amount to make
16 the transaction. I was willing to take it, because it was for
17 \$300. So the DVD in the earlier auction, that's what I did.

18 Q. In this transaction, once you received notice that you
19 won the bid --

20 A. Well, before that, because of my concern about the --

21 THE COURT: Well, now, hold on a second. Let him frame
22 the question before you try to answer it. Go ahead.

23 THE WITNESS: Okay, sorry.

24 THE COURT: Your question.

25 Q. BY MR. BITTMENN: I'll just reframe the question, then.

1 A. I'm sorry.

2 Q. Before you won the bid did you inquire during this
3 matter the method of payment?

4 A. I did, because again, the higher amounts that I
5 normally had -- and in fact, the only reason I did was because,
6 as I said before, it was for a birthday present, and --

7 THE COURT: Now, I think you've answered the question.
8 I think it was "yes."

9 THE WITNESS: Okay. Yes, that was the answer.

10 THE COURT: All right. The next question. Is this an
11 appropriate time to break for lunch, Mr. Bittmenn, since it's
12 about noon; is that all right?

13 MR. BITTMENN: Sure.

14 THE COURT: Okay. We're going to be recessing for
15 lunch until 1:15. We'll ask that the jurors reassemble in the
16 jury room after the lunch period. You're on your own for
17 lunch. Remember the admonition I gave you. It still applies.

18 As you go and come from the courthouse, remember not
19 to stop to talk to other people in the area. You've heard of
20 some of the witnesses that may be called, and maybe others who
21 will become necessary as we go along, and we don't want you to
22 run into any of them inadvertently.

23 If you find yourself in the same eating establishment
24 with somebody else involved in the case, you don't have to
25 panic and run out of the place. Just go ahead and eat, and

1 don't communicate with that other person.

2 Are there any questions about the admonition or about
3 when you're supposed to be back, or where? Okay. We'll see
4 you at 1:15.

5 (The jurors exit the courtroom.)

6 THE COURT: Counsel, I'll ask that you join me in
7 chambers for a moment to discuss the jury instructions, and
8 then we'll reconvene at 1:15. We're in recess.

9 (Recess taken.)

10 THE COURT: We're back in session. It's about 1:15.
11 Members of the jury are present, as are the defendant, her
12 Counsel, and Counsel for the State. You may continue.

13 MR. BITTMENN: Thank you, Judge.

14 Q. BY MR. BITTMENN: Ms. Fallaha, I believe before we
15 broke for lunch you were telling the jury how the escrow
16 process through Ebay works. Were you finished with your
17 explanation?

18 A. Pertaining to the explanation I was. I had one more
19 note in regards to that I had asked Trish or e-mailed her about
20 putting the card in escrow, actually if I win the auction,
21 could it go through escrow to purchase the card.

22 Q. Because that's the way you wanted it to be done?

23 A. Yes, for that amount of money.

24 Q. How did she tell you that she would do it?

25 A. Then e-mailed me back, and do you want me to read

1 verbatim or just tell you.

2 Q. Tell us what she said.

3 A. That she has done it in the past, and that she got
4 burned and did not want to do it again.

5 Q. When you say "it," you're referring to the escrow?

6 A. Pardon me?

7 Q. Going through escrow; is that correct?

8 A. That's correct, uh-huh.

9 Q. Okay. So what did you decide to do?

10 A. I just decided to go ahead and still purchase it,
11 still try to win the bid.

12 Q. Okay, and did you put a bid up?

13 A. I did.

14 Q. And you won?

15 A. I won the auction, yes.

16 Q. All right. What information I've submitted to you led
17 you to believe that she actually possessed the card?

18 A. Her description was probably the main thing, that she
19 e-mailed me back from the information about the card, and that
20 it was on Ebay. It looked like it was a scan of the actual
21 picture of the actual card itself. It was a scanned picture of
22 the card.

23 Q. You recall a photo scan?

24 A. That's correct.

25 Q. And when you e-mailed and asked her if all the corners

1 Q. Okay, and so certainly you would have no problem and
2 objection to someone sending those Beanie Babies to, quote,
3 "Real Babies" to make sure they were authentic?

4 A. I have no problem with that.

5 Q. You in fact at one point got an e-mail from Ms. Snyder
6 to the effect that she had sent these babies to Real Babies,
7 correct?

8 A. Yes.

9 Q. And you knew that fact before you made your bid; did
10 you not?

11 A. On my -- before I made my second bid.

12 Q. Before you made the second bid. You had already made
13 the bid on Steg, correct?

14 A. Uh-huh, and it said that they had already been sent,
15 which would have been plenty of time to get them back.

16 Q. Now, Ms. Snyder did in fact reimburse you. There was
17 that extra charge for mailing, correct?

18 A. Correct, it was certified.

19 Q. So it would be certified and insured, and she said
20 that she would reimburse you that cost, correct?

21 A. Correct.

22 Q. And she in fact did reimburse you that cost?

23 A. She did.

24 Q. And she reimbursed you that cost even before your
25 contact with her on the 10th, correct?

1 A. Around -- I don't know the exact date. It's probably
2 a little bit into June now. Probably -- it could have been
3 anywhere from the 7th to the 9th. I'm not sure.

4 Q. Okay, and did you receive replies to your e-mails?

5 A. No.

6 Q. How many e-mails did you send?

7 A. I sent one e-mail, and then I started getting
8 concerned. I started looking for a phone number.

9 Q. Where did you look for a phone number?

10 A. I called information. It was -- because 435 is the
11 area code, I dialed 555-1212. That's the information for the
12 area, and they gave me a number that I called.

13 Q. Did you look up her stats on Ebay first, before you
14 called for information?

15 A. Yes. Because of the concern now that I haven't heard
16 anything one way or the other on the way, whatever, I started
17 looking at her feedback, and at this point I -- there was no
18 change in the feedback.

19 Q. When you looked up her phone number on the Ebay
20 records -- were you here when Officer Blanchard testified this
21 morning?

22 A. I didn't look it up on the Ebay records. I called
23 information.

24 Q. Is that where you got the phone number you gave to
25 Officer Blanchard?

1 A. About -- in a period of about a day or so, about four
2 times.

3 Q. Different times of the day?

4 A. Different times, yeah, absolutely.

5 Q. Did you try and call various days?

6 A. No, because at that point it was getting -- you know,
7 I was getting really nervous, so I didn't call various days.
8 What I did was starting to find information about her, like her
9 address and that type of thing, which I had had, and I decided
10 at that point, because I had gone back to the Ebay site, to
11 look back in her feedback again, and there was negative mail
12 with her. People were making negative --

13 MR. HOLM: Object to what people were saying. It's
14 hearsay, your Honor.

15 THE COURT: Overruled. She's not quoting them.

16 THE WITNESS: No, I was -- I'm just saying that there
17 was negative feedback, as opposed to positive, which was all
18 that there was at a different time.

19 Q. BY MR. BITTMENN: So at one point did you contact the
20 police?

21 A. I did. I phoned them on -- I believe the date is June
22 the 9th. I contacted Sergeant Orton.

23 Q. Okay.

24 A. He had said to take the information down. I filled
25 him in on everything that was going on. The first phone call I

1 Q. And in your capacity for US West are you familiar with
2 how they keep and maintain records?

3 A. Yes, I am.

4 Q. You received a subpoena from the State of Utah that
5 directed you to be here?

6 A. Yes, I did.

7 Q. And did it ask you to review certain records from US
8 West?

9 A. It did.

10 Q. I'm handing you what's been marked as State's Exhibit
11 No. 26. Does that look familiar, that stack?

12 A. Yes, it does.

13 Q. And are those the records that US West pulled in
14 preparation for trial today?

15 A. Yes, they are.

16 Q. Do those records indicate there who's the telephone
17 system user?

18 A. Yes, it does.

19 Q. And who's the user?

20 A. Patricia A. Snyder.

21 Q. And what's the telephone number given to that user?

22 A. (435) 867-8728.

23 Q. And do those records indicate how long that telephone
24 number has been a valid telephone number?

25 A. In one of these papers -- and I'd have to go back and

1 find it -- it says 1996 was the date --

2 Q. Started in '96?

3 A. Yeah.

4 Q. What's the last date on those records? I mean, we
5 didn't ask for records from the beginning of time, but --

6 A. It was the year, if I recall.

7 Q. Okay.

8 A. June of '99 back through April of '99, June of '99,
9 July of '99. So go back to the back, I've got November of '99,
10 and the last page is December of 1999.

11 Q. Okay, and those records indicate that the defendant
12 had telephone service for May and June of 1999?

13 A. Correct.

14 Q. Is this -- if a customer for US West has an outage
15 where they can't receive phone service, is it common practice
16 for US West to give them a credit on their bill?

17 A. If a customer calls in a case trouble, if their
18 service is not working, and then calls the business office,
19 the business office will normally credit them for the period
20 that they're out.

21 Q. So the burden's on them. They've got to tell you?

22 A. Yes.

23 Q. You guys don't -- I mean, you guys aren't all seeing,
24 and you don't know everything?

25 A. No, we don't. Only if there's a request to do that,

1 MR. HOLM: I believe Counsel will stipulate those two
2 were photographs taken by Detective Sergeant Holm on the 9th of
3 June of 1999; is that correct?

4 MR. BITTMENN: So stipulated.

5 THE COURT: All right.

6 Q. BY MR. HOLM: I would like you to start with the lowest
7 number on that and tell us what that depicts, and tell us the
8 number, too, if you would, please.

9 A. This is No. 29.

10 Q. Okay, and what does that depict?

11 A. This shows the back room of my house with a chest of
12 drawers with Beanie Babies laying all over the top of it.

13 Q. And does that reflect what that portion shown in the
14 photograph looked like on June 9th of 1999?

15 A. Yes, it does.

16 Q. Okay. Next exhibit?

17 A. It's No. 30.

18 Q. What is that?

19 A. This is my living room of my house, and it's a chair
20 with an ottoman that I have that also has Beanie Babies from
21 top to bottom on it.

22 Q. Okay, and does that also accurately reflect what it
23 shows as of June 9th of 1999?

24 A. Yes, it does.

25 Q. Next one, 31?

1 A. No. 31, this is a cabinet I have right as you come in
2 the front door, and it's just a stack of baseball cards sitting
3 on it.

4 Q. Okay, and does that reflect what it looked like on
5 June 9th of 1999?

6 A. From this close, yes.

7 Q. Okay, 32?

8 A. No. 32 is the same case I have right inside my front
9 door, that shows the cards and a couple of Beanie Babies in
10 cases.

11 Q. Okay. Is that what it looked like on June 9th?

12 A. Yes.

13 Q. Next?

14 A. This is the room where the computer is at.

15 Q. All right.

16 A. This is the bottom drawer of the stand the computer's
17 on, and it's open, and basically all that's in it is plastic
18 covers and assorted stuff to hold baseball cards.

19 Q. And is that as it existed on June 9th of 1999?

20 A. As far as I remember.

21 Q. Okay, next?

22 A. Okay, this is the upstairs bedroom again where the
23 computer is at. This has a picture of -- if you're standing in
24 the door, the left hand corner of the room, and it shows Beanie
25 Babies, baseball cards all over the floor, boxes of baseball

1 cards on the floor also, and binders that have baseball cards
2 in them.

3 Q. Okay. Is that what it looked like on June 9th of 1999?

4 A. Yes, as far as I can remember.

5 Q. All right.

6 A. Okay, No. 35, this is the same corner of the room, but
7 a little higher shot of the same that are shown. That one has
8 a couple of autographed baseballs, a picture of that's Ray
9 Allen and an autographed Ray Allen card. You can see some of
10 the autographs along that -- or higher up on the wall, just
11 against the wall, an autographed bat, boxes of baseball cards.
12 You can't tell that's what they are from here, but that's what
13 they are, and other boxes and this side that's all baseball
14 cards.

15 Q. Okay. Is that what it looked like on June 9th of '99?

16 A. Yes.

17 Q. And finally No. 36?

18 A. Okay, this is -- let's see, if you're standing in the
19 door, directly to the left, this would be the second half of
20 that shelf. This has more and more baseball cards just stacked
21 on top of each other, a couple of autographed items, and a
22 couple of books and baseball cards down here. There's some
23 baseball cards down here.

24 Q. And is that as it looked on June 9th of 1999?

25 A. Yes, it is.

1 MR. HOLM: We'd offer Exhibits 29 through 36.

2 THE COURT: Any objection?

3 MR. BITTMENN: No objection.

4 THE COURT: They're all received.

5 (Exhibit Nos. 29 through 36 received into evidence.)

6 MR. HOLM: Then we probably should show them to the
7 jury, your Honor, as well as Exhibit 2.

8 MR. BITTMENN: Could we just publish everything to the
9 jury when we send them back to deliberate, then, to save time.

10 THE COURT: Is there some reason you want to do that
11 now?

12 MR. HOLM: Well, I do want to save time, so we'll do
13 that.

14 THE COURT: All right. Thank you.

15 MR. HOLM: Probably just be another moment, but just
16 review my notes here and make sure I've covered everything.

17 Q. BY MR. HOLM: Is Real Beans a factory?

18 A. It's a -- I'm trying to think of a word for it. It's
19 an authentication service.

20 Q. Okay. Did you ever make statements to Ms. Parrish to
21 the effect that the Beanie Babies were at a factory?

22 A. No, I did not.

23 Q. That you were waiting for them to come from a factory?

24 A. No.

25 Q. Did you ever have a discussion with her -- you did

1 lack of intent to defraud. She had the money, but -- and
2 was able to send it all back. There's no evidence that she
3 invested it in the -- or bought a boat, went on vacation or
4 anything like that. She had the money. It was all there. Was
5 able to pay every cent back to both of these victims, and there
6 was no lost value of the money.

7 The defendants didn't lose anything -- or the victims,
8 excuse me, didn't lose anything. They got their money back.
9 Arguably they lost the time value of use of that money for a
10 period of a few days, but they would have lost that anyway.
11 Under these circumstances, you're entitled to a reasonable
12 period of time to deliver those goods.

13 In summary, I believe that you will -- you should
14 answer only the last question that you get (inaudible). Not
15 guilty. I'm not going to get another chance to speak with you.
16 Mr. Bittmenn is. I would ask that when you listen to him, that
17 I'll probably disagree with just about everything that he says,
18 depending. Just keep in mind what my response is (inaudible).
19 Thank you.

20 THE COURT: Thank you, Mr. Holm.

21 Mr. Bittmenn.

22 MR. BITTMENN: Thank you, Judge, Counsel. I take a
23 dollar out of my wallet. I give it to Detective Holm. He
24 gives me a pen. I now possess this. He now possesses my buck.
25 I give a dollar to Detective Holm, and he keeps it. He's got

1 all the stuff.

2 Mr. Holm argues to the jury that he didn't appropriate
3 it improperly. He didn't exercise control over any property.
4 Property by definition under the law is not exclusive of money.
5 The transaction, then, I give you a dollar today, tomorrow you
6 give me a product. If you keep on holding onto it, you are
7 possessing property.

8 Whether it's the money or the baseball card or the
9 Beanie Babies, she possessed property. Every transaction was
10 done according to her directions. There was no use of escrow
11 accounts. There was no use of any other way except, "You send
12 me the money first and then I'll send you the goods." She
13 never sent the goods.

14 Both payments were made in the form of either
15 certified bank checks, money orders, something that's good for
16 cash value on its face when you turn it over to a teller at the
17 bank. It's something that does not need to be ran through the
18 banking system, through your account to make sure it doesn't
19 bounce like a rubber ball.

20 The defendant says, "I thought it was a personal
21 check." How many personal checks have you all seen that say,
22 "State Bank of California," or "Bank One," whatever bank that
23 cut the check. You have to judge the reasonability of every
24 single excuse she made. So did she possess property? Yes.
25 Either she possessed the money or she possessed the goods.

1 She held onto it.

2 One quick word on witnesses. The State introduced two
3 police officers. I think the testimony was they don't know
4 this person, they had no grudge against this person, but they
5 are assigned to investigate these people's complaints. They
6 did so, and they made a finding.

7 There was no showing of any bias. There's no showing,
8 as Mr. Holm would like you to believe Sergeant Orton
9 misconceived the actions that he put in the report. He told
10 you that he spoke with the defendant. He told her she didn't
11 have to talk to him. She could have an attorney there. She
12 said, "No, I'll talk to you." He spoke with her, and then an
13 hour later he went down and wrote down the content of the
14 interview one hour -- apparently memory fades in one hour.

15 We're going to send you back to the jury room in ten
16 minutes, and ask you all to remember things that took place six
17 hours ago. So does your memory fade in an hour? Not to the
18 substance of what took place. Not to the important things.
19 Not to things that you need to remember and you know you need
20 to remember.

21 I think Mr. Holm stated that Sergeant Orton testified
22 that the defendant told him she never had the card. I don't
23 recall it that way. I recall that he testified she put the
24 card in an envelope and sent it.

25 Simple fact of the matter is -- and I'll only say this

1 one more time -- people sent her money for things that she did
2 not send back, according to her own rules that she set up. She
3 did not act timely.

4 Now, we need to go over the matter one time to the
5 defendant herself, and why I think you need to come back with a
6 verdict of guilty. Excuse No. 1 deals with sending things to
7 Real Beans. She said she believed she sent these things to
8 Real Beans based on information provided to her through an e-
9 mail from Shannon Molden, during the last half of May. That
10 was her corroboration that these things were sent and got to
11 Real Beans.

12 We asked her who Shannon Molden was. She said, "Well,
13 I really don't know. I get e-mails from her." We asked her
14 what Shannon Molden does. She said, "Well, I really don't
15 know." She doesn't know who she is, what she does. She
16 doesn't know if she works for Real Beans. She doesn't know if
17 she works for Campbell's Soup. She doesn't know if she works
18 for Ford Motor Company. Doesn't even know if she works. All
19 she knows is that she put some faith in some e-mail that she
20 thought she received on the 22nd of May.

21 When we asked her, she said, "Oh, yeah, (inaudible)
22 the 28th." And it said it's from Shannon, too, and it said that
23 Real Beans didn't have the stuff. She doesn't even tell you
24 that. When we asked her why, she said, "Well, nobody was going
25 to ask me that, so I wasn't going to tell them." She's not

1 being forthright and honest on the witness stand. She's not
2 telling you the whole story.

3 Let's talk about the personal check versus the counter
4 check. She testified that she's been in the business for three
5 or four years, that she's selling things over the Internet.
6 From the testimony, she'd done thousands of dollars of business
7 a month. One sale to Ms. Parrish brings in almost \$1,500. One
8 sale from Renee brings in \$650.

9 If you're dealing in amounts such as \$650 or \$1,500,
10 and it's going on for a period of three or four years, don't
11 you think you would develop familiarity with the form that
12 checks and cashiers checks come in? Is it reasonable to assume
13 that this was yet another mistake in the long line of mistakes
14 she's claiming? Maybe it is.

15 I don't think so. When you notice a mistake on the
16 way to the bank, and you've got a question about a bank
17 document, you ask a teller. That's the first reasonable step.
18 Two, when you hand it to the teller, she hands you cash in
19 exchange, that should give you some idea that that bank
20 document's probably pretty good. Three, you should inspect
21 closely the face of the bank document before you try to
22 withhold somebody's property.

23 She has four years -- or three to four years of
24 experience making thousands of dollars a month. Says this
25 one's a mistake. Maybe it is. Put that together with the

1 whole picture. Put that together with many thousands of
2 dollars of business a month, but then you put a Nolan Ryan
3 rookie card in an envelope and you send it away. That doesn't
4 make sense.

5 Put those two together with you take three boxes full
6 of Beanie Babies worth upwards of \$1,000 and you just ship them
7 in the normal mail. You don't ship them certified, you don't
8 ship them return receipt requested. That doesn't make sense.
9 You take those three and you combine them with the only way
10 you're going to try and track down those thousands of dollars
11 in property that you just shipped out, or you're claiming you
12 shipped out, is you're going to rely on e-mails from somebody
13 that you don't know what the heck they do for a living. You're
14 not going to call the company. You're not going to try and
15 talk to the manager. There's no testimony she called Real
16 Beans. There's no testimony she tried to talk to the manager.
17 There's no testimony that she sent them e-mails or wrote them
18 letters or did absolutely anything.

19 So now you put those four things together with the
20 fact that she sat right there after she took an oath, she swore
21 to God that she would tell you people the truth, and she'd lie
22 to you. I asked her three times, "Did you send anymore e-mails
23 to Shannon Molder in May?" "No." "No." "No." Then I handed
24 her one to Shannon Molder. It had her name on it, that dealt
25 with the substance of this Court trial today. It had specific

1 information that deals with this trial, and it was directed to
2 Shannon Molder, and it was written on September 28th. She sat
3 up there and she lied to you, ladies and gentlemen.

4 Some people can sit here, raise their hand, swear to
5 God Almighty to tell you the truth, and then hold us up. You
6 have to drag out of them, and then tell you a flat-out lie, you
7 can't believe them.

8 The final big thing you've got to put all that
9 together with is the large admission she made on the 10th of
10 June of 1999. If you make your income by selling goods and
11 services over the Internet, and there's a problem and you don't
12 think you've done anything wrong, how you don't think it's
13 reasonable to run home and ship out over \$10,000 to people who
14 you don't think you've wronged?

15 There's no testimony she tried to call them or e-mail
16 them or write them letters to try to fix the situation. All
17 she did was start cutting checks and making excuses over the
18 problem. She didn't try to (inaudible). She just started
19 writing checks (inaudible).

20 The intent element of a crime theft says that you --
21 the purpose for an intent to deprive, Mr. Holm says, "I can't
22 prove it." I disagree. The reason she sent the money back is
23 so she could be compensated, so that these people would not
24 come here, they would not testify, so that she could get out
25 of the mess she's in right now. She sends back. She hopes

1 everything goes good. She hopes the State of Utah ignores it
2 and goes away.

3 We don't anymore. When people commit wrong acts in
4 Iron County, it's up to law enforcement and eight people of
5 common sense sitting on a jury to hold them accountable. I
6 told you I would ask you to do that this morning. It's night.
7 I ask you, please add up all the false stories, add up all the
8 misstatements, and hold the defendant accountable. Thank you.

9 THE COURT: Thank you, Mr. Bittmenn. We'll ask the
10 bailiff to come forward and take the oath to take charge of the
11 jury.

12 COURT CLERK: Do you solemnly swear that you will take
13 charge of this jury and take them to the jury room, that you
14 will not allow any person to communicate with them during the
15 course of their deliberations, nor communicate with them
16 yourself, except for inquiring as to whether they have agreed
17 upon a verdict, they will not communicate with any person in
18 this case (inaudible) deliberations for a verdict agreed upon,
19 and that you will return to the courtroom and (inaudible)?

20 COURT BAILIFF: I do.

21 THE COURT: All right. Ladies and gentlemen, the time
22 has come for you to deliberate. You'll take with you the
23 instructions, the verdict form and the exhibits that have been
24 received. You may retire to the jury room.

25 (The jury exits the courtroom.)